



Department of Political Sciences

Master's Degree in International Relations

Chair of International Organizations

**INTERNATIONAL DRUG TRAFFICKING
FROM THE LAW TO THE PRACTICE: THE
ROLE OF UNODC AND THE AFGHAN CASE**

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ACADEMIC YEAR

2013/2014

ABSTRACT

Today, we live in an ever-increasing interconnected world and if on the one hand, our daily life becomes easier, from the financial transactions to the international commerce, on the other hand, during the last decades, some criminal phenomena have taken advantage of the most important technological innovations in order to expand their reach and to increase their profits. The result is that it has become more difficult to counteract crimes like drug trafficking, money laundering and corruption, because their effects cross the national and regional borders, thus becoming in certain cases a truly global threat. Consequently, the international juridical framework evolved through multilateral schemes of cooperation trying to keep up with all these transformations and many international control systems and bodies were created.

The present thesis is about the drug trafficking phenomenon from a juridical point of view, thoroughly analyzing its specificities, its effects, the international conventions that aim at regulating it and the bodies entrusted with the task of counteracting it. In particular, this dissertation wants to answer some specific questions. First, what is drug trafficking from a juridical point of view and could it be considered a threat to the regional and international peace and security? Secondly, what does the international legal framework provide for in the fight against drug trafficking and how did it evolve? Thirdly, what is the main supranational entity entrusted with the aim of counteracting drug trafficking and how does it function? Fourthly and finally, are these norms and bodies effective or is there a discrepancy between the theory and the practice?

In order to answer to the above-mentioned questions and to rationally exploit all the resource material, this dissertation is divided into four different chapters.

The first chapter analyzes the drug trafficking phenomenon, trying to assess whether it could be considered a threat to the regional and international peace and security or not. The study of the most eminent scholars has been taken into consideration, especially as regards the concept of “security” and of the term “threat”. The former has passed through a long evolution and today, there no longer exists a mere military acceptance, namely the realist one, but rather it is largely accepted the concept of “Collective Security”, which together with the so-called “Three Ds” (Defence, Diplomacy and Development) represents the attempt to comprehend within this wide concept all the relevant aspects of the human life. Individuals, in fact, in the last century have become the focal point of discussion when dealing with security and the fundamental actors of the international community, together with the States, the IGOs and the NGOs. Individual rights and fundamental freedoms have formed the base of the so-called Human Security, which together with the Sustainable Security, the Collective Security and the Defensive Security have become the paradigms around which the contemporary debate revolves and that most of the countries and IGOs of the international community follow through a combination of hard and soft power. In sum, security today is a broader concept than it was a century ago.

The dissertation then takes into consideration the meaning of the word threat, which assumes a particular relevance within the UN system and in particular as regards the functioning of the UN Security Council. In fact, it is the precondition for the invocation of Chapter VII of the UN Charter. The possible implications of such an assessment are quite clear: if drug trafficking was considered a threat to peace and security, the

authorization to Member States of the use of force would be an option, according to some authors. Nevertheless, a thorough analysis of the meaning of the word “threat”, of the practice of the Security Council and of the UN Charter clearly demonstrates how only peacekeeping operations have a legal basis and are a legally viable option for the international community. In fact, the authorization of the use of force is neither legally prescribed nor the most effective one. Under the current practice of the Security Council, drug trafficking might be considered in the future a threat to international peace and security, as it is a case-by-case assessment and in the third and final paragraph I demonstrated the reasons why such a wording might be accorded to this crime.

The main negative impacts that drug trafficking imposes on all societies were matched with the most important international conventions on human rights, in order to demonstrate the serious threats it represents at all levels, namely the national, regional and international levels, for the entire humankind, especially in a globalized world. Drug trafficking imposes great challenges and the latter can be classified by their target: society, public health, economy and governance. All those impacts range from poverty to money laundering, from the spread of communicable diseases to the financing of terrorism and transnational organized crime, and they can be matched with the norms of the most important international treaties, such as the UN Charter, the UDHR, the ICESCR and the ICCPR. This theoretical study is extremely useful in order to understand how the negative impacts of drug trafficking infringe those norms and consequently represent a violation of the individual fundamental rights and freedoms. More treaties could have been analyzed, but the above-mentioned ones are certainly expression of the widest consensus possible. Nevertheless, it is necessary to bear in

mind that besides the ones taken into consideration for the purposes of this dissertation, the international treaties, conventions and covenants that deal with such issues are numerous. When dealing with the effects of drug trafficking on society, it is also necessary to talk about its links with the financing of terrorism. The latter has been repeatedly addressed by the work of the UN Security Council and the General Assembly as a threat to international peace and security and these institutions have tried to fight all those crimes that make its existence and spread possible. For this reason, both these UN bodies have approved resolutions and statements with the explicit commitment towards the fight against drug trafficking.

Finally, we should consider that most of the above-mentioned crimes have a transnational nature and have the capacity to impose their effects well beyond national borders, thus posing at risk both the regional and the international stability. Drug trafficking effects in particular can be classified also by their extension. Nationally, drug trafficking provokes an increase in crime, violence, corruption and so forth; regionally, because of its transnational nature, it destabilizes entire regions; internationally, because of its links with the financing of terrorism and of transnational organized crime, it is a fundamental factor when considering international peace and security. Thanks to the analysis of all the available sources, it is then possible to infer that since it violates all those fundamental rights and international norms, drug trafficking constitutes a threat to international peace and security and it must be addressed by the responsible supranational institutions, even if a formal recognition through a resolution or an equivalent document has not been done yet.

The second chapter deals with the international legal framework from a historical and juridical point of view. The international awareness that a multilateral cooperation was

needed to effectively eradicate this ever-increasing problem arose at the beginning of the XX century. In fact, in 1907, the first treaty between the United Kingdom and China was signed and ratified. On the one hand, the UK agreed to reduce the Indian opium exports to China by 10% per year; on the other hand, China agreed to reduce its opium cultivation at the same pace. Nevertheless, the amount of illicit trafficking and smuggling of opium increased exponentially. The situation changed when the US convened the first international conference on the opium question in Shanghai in 1909, whose work constituted the basis for the 1912 International Opium Convention of The Hague. The Shanghai Conference assumed a particular relevance because it highlighted the importance of facing the drug question on a multilateral ground. However, the 1912 Convention was doomed to fail in the short-term, for a series of weaknesses, among which the most important is the requirement that all the 34 manufacturing and producing countries should ratify the treaty before the latter could legitimately enter into force. After the I World War, this problem was solved when an identical article was inserted in all the peace treaties, which required the contracting parties to sign and ratify the 1912 Opium Convention if they had not done it yet. Before 1945, other conventions and treaties were subsequently signed and ratified. The most important ones are three. The first is the 1925 Convention, which introduced the import/export authorization method, regulated cannabis for the first time and instituted the Permanent Central Opium Board. The second one is the 1931 Convention, which divided all the controlled substances in four categories, submitted to different levels of control. Finally, it is paramount the importance of the 1936 Convention. The latter in fact represents the first attempt of eliminating the illicit trafficking in drugs, by making it a “punishable offence”.

After the II World War, the UN assumed all the functions previously performed by the League of Nations with regard to the drugs question. However, many international legal agreements formed the legal framework in the fight against drug abuse and trafficking and it was a tough task for jurists and lawyers to manage all those overlapping provisions. It was for this reason that from its very first session, the newly born ECOSOC called for the consolidation of all the existing treaties.

The 1961 Single Convention is the outcome of those efforts and at least for few years, it succeeded in providing the international community with a clearer legislation. Nevertheless, it was not the only convention in force, since the 1936 Convention was not superseded. The limitation to medical and scientific purposes of the trade in and use of controlled drugs is an important achievement of the Single Convention, together with the rationalization of the responsibilities and functions of the competent international organs. The main actor of the control system is certainly the United Nations, but also the Commission on Narcotic Drugs and the International Narcotics Control Board are essential in promoting cooperation among the various national governments. In its Art. 38, the Single Convention faces the drug demand problem: it reflects the increasing awareness that a multidisciplinary approach was required to effectively counteract drug trafficking and abuse. Furthermore, the 1961 Single Convention preserves the import/export certification system created by the 1925 Convention and maintains the schedule system provided for by the 1931 Convention, even if it does not explicitly make illegal the scheduled drugs.

In the attempt to reach a compromise between the various international stakeholders and to fill the voids left, two more conventions were signed and ratified. The first convention is the 1971 Convention on Psychotropic Substances. The latter placed under

strict control a wide array of substances, which were divided into four different schedules that are subdue to different degrees of control, from the strictest to the most tolerant one. The 1971 Convention creates a licence system very similar to that of the Single Convention. On the one hand, in the case of the I Schedule of drugs, the States undertake to limit as much as possible the import and export of those drugs, submitted to the control of the national competent authorities. On the other hand, with regard to the remaining Schedules, the States shall provide security measures and according to Art. 9, those substances must be dispensed pursuant to medical prescription only. The most important provision is Art. 22, which deals with the penal provisions for drug traffickers: the convention makes an international offence the illicit traffic in psychotropic substances, against which each State must adopt a national law.

The second convention is the 1988 UN Convention against Illicit Traffic in Narcotic Drugs and Psychotropic Substances. For the first time, all the consequences of drug trafficking finally received a full and complete attention by the international community. The States so desired to make all necessary efforts to combat what was once defined “an evil” and that now is finally conceived as a serious threat at all levels. Moreover, from Art. 3, which enumerates the actions that constitute criminal offences, four additional provisions stem. The latter provide four different means to counteract these crimes: the creation of the jurisdiction, confiscation, extradition and the controlled delivery. Following the path opened by the previous conventions, also the 1988 UN Convention puts a particular emphasis on the importance of international cooperation in the fight against drugs production, trafficking and abuse, but it introduces a key innovation, namely it significantly addresses also the eradication of the cultivation and of the demand of narcotic drugs and psychotropic substances. In this regard, there is a call for

alternative livelihoods.

During the recent years, one of the most important decisions taken in the field of the fight against the drug phenomenon is a UN General Assembly Resolution (A/51/950 of 1997), which envisaged a partial reform of the UN system. Among the various changes, there was the merge of the two then-existing programmes, namely the United Nations International Drug Control Programme, and the Crime Prevention and Criminal Justice Division, in the so-called Office for Drug Control and Crime Prevention that will be later known with the name of United Nations Office on Drugs and Crime (UNODC).

Following the path opened by the second chapter, the third one deals with the United Nations Office on Drugs and Crime (UNODC) from a juridical point of view, since it represents one of the most important bodies entrusted with the task of fighting drug trafficking and abuse. Created in 1997, the Office resembles a Specialized Agency, but it does not have the same legal status, since it does not have a separate charter, budget and secretariat. Nevertheless, it exercises specialized functions under a broad mandate attributed by the UN member States. In particular, its tasks are two-fold: it works as an office of the UN Secretariat and thus, it performs the functions attributed by all relevant treaties, but this Office is also a technical services provider. The UNODC legal basis is represented by all the drug-related treaties thoroughly examined in the second chapter, together with the UN Convention against Transnational Organized Crime, the UN Convention against Corruption and all the terrorism-related conventions.

UNODC is an office of the UN Secretariat and thus, its officials undergo the same rules and have the same rights and duties of the officials of the UN Secretariat. As regards their status, the main characteristic and guiding principle is that of “independence”,

according to Art. 100 of the UN Charter. On the other hand, as regards the immunities and privileges of the UNODC officials in Vienna, where its headquarters are located, we should refer to the 1995 “Agreement between the Republic of Austria and United Nations regarding the seat of the United Nations in Vienna”. The latter establishes the immunity from legal process in respect of acts performed in their official capacity, the immunity from taxes and the immunity from immigration restrictions.

The structure of UNODC has evolved during the last 15 years, but it has not been completely changed or revolutionized as compared with the initial organizational structure envisaged in 1998. In particular, the UNODC is still guided by the Executive Director, who is sustained by the Office of the Executive Director, and it rests on a four-pillar structure. The units are the Division for Operations, the Division for Treaty Affairs, the Division for Policy Analysis and Public Affairs and the Division for Management. Each of these divisions is headed by a Director, who is directly accountable to the Executive Director. The only relevant innovation is the 2004 clause that allows the continuity of the decision-making process in case the Executive Director is out of office. A characteristic of the UNODC structure is the sectoral division between the drug-related units and the crime-related ones. This is particularly evident in the fact that UNODC serves as secretariat both the Commission on Narcotics Drugs and the Commission on Crime Prevention and Criminal Justice, without however a common administrative and financial organization.

UNODC has a number of means to achieve the core objectives of its mission. Especially as regards its normative and treaty-based functions, it has developed some legal tools, which have the primary aim of promoting adherence to the treaties and assisting member States in implementing the provisions therein contained. The legal tools at the

UNODC disposal are the Competent National Authorities Directory and the Mutual Legal Assistance (MLA) Request Writer Tool. Nevertheless, UNODC does not rely only on legal tools: the member States agreed to charge UNODC also with the task of providing first hand statistical data on drugs and crime. Thus, UNODC is responsible for publishing reports and surveys, which constitute the basis for the formulation of national and international policies and priorities.

As regards the UNODC budget, there exist two different methods of financing. On the one hand, when it serves as an office of the UN Secretariat, UNODC derives its financial resources from the regular and mandatory contributions that every UN member State is obliged to pay in favour of the organization. On the other hand, for the technical cooperation function, the Office is funded through voluntary contributions, which might be earmarked, un-earmarked or soft-earmarked. Actually, the voluntary contributions amount to over 90% of the total budget. The immediate consequence is that UNODC has its leeway limited and it has not the possibility to autonomously decide its own priorities. In fact, since UNODC primarily relies on voluntary contributions and in particular on the special purpose ones (90% of the voluntary contributions), it would be legitimate to think that member States are able to influence UNODC policies and priorities, by financing a programme rather than another. Thus, States definitely make a region or a country contingent upon the others and thus, they might push on programmes according to their national needs and priorities rather than to the actual international agenda and to the real global necessities.

The fourth chapter is devoted to the case study. In the social sciences, it is not possible to develop a context-independent theory and for this reason, a case study was introduced in the present work in order to offer a concrete knowledge of the topic.

The chapter first explored the troubled historical background of this country, in order to better comprehend the actual situation. The path that has led to the actual situation has been long and might be divided into four different phases. The first one is the so-called “take-off” of the Afghanistan's drug career (1979-1989). The reasons were both exogenous and endogenous. Among the exogenous ones, there was a opium poppy production shift from the Golden Triangle to the Golden Crescent and the Iranian ban on the drug production, whereas among the endogenous factors, we should mention the mujahideen's jihad against the Soviet invaders, in favour of which the opium cultivation became a profitable financing system. The second phase was the “Warlord period” (1989-1996), during which the drug industry gradually developed into the most significant source of revenue, because the local commanders did not receive anymore the international funding in support of their cause. During this period, the UNDCP launched its first initiative, but the programme failed because of the “poppy-clause”, which required that every village had to sign an agreement for the project to be started. The third phase is the “Taliban period” (1996-2002), during which the war economy consolidated. Despite the UNDCP negotiated with the Taliban authorities and a law that banned opium cultivation was approved in 2000, since then the situation has ceaselessly worsened. In 2001, the Northern Alliance appointed Hamid Karzai as Afghanistan's new president, but as the fourth and current phase began, the Afghan drug problem became a truly “drug economy”. All sectors of the society are involved and strategic links between drug traders, warlords-turned-politicians and corrupt officials were established. On the one hand, the local farmers are not incentivized to shift to legal activities and the opium economy and the insurgency both thrive in an insecure environment with a weak and corruptible state that is not capable of imposing the rule of law. On the other hand,

this context imposes negative impacts not only on the Afghan society, but also on the neighbouring States and to the international community as a whole, given the transnational nature of all these criminal activities.

Then, the UNODC action in Afghanistan was presented from a normative, operational and programmatic point of view. From a normative perspective, Art. 7 of the Afghan Constitution provide for the prohibition of the cultivation and smuggling of narcotics and of intoxicants. The same article subdues Afghanistan to the observance of the UN Charter and of the international treaties to which this country has joined. In this regard, Afghanistan is bound by all human rights-related, drug-related and crime-related conventions that today are still in force, with the remarkable exception of the 1972 Protocol amending the 1961 Single Convention. Pursuant to Art. 7 of the Constitution, in 2005, a law was approved, which prevented the cultivation and trafficking of narcotic drugs and psychotropic substances. It was in compliance with the international conventions, but no forms of international cooperation were envisaged and a truly State monopoly of the wholesale and international trade in the regulated substances was not established. In 2010, this law was superseded by a new one, which focuses on the alternative livelihoods and the strengthening of the cooperation with the NGOs and the IGOs.

From an operational perspective, instead, it should be acknowledged that the headquarters of the Country Office of Afghanistan (COAFG) are in Kabul and that five provincial offices have been opened in five key provinces of the country. In its structures, the COAFG resembles the UNODC central duty station and its work is based upon six guiding principles, the most important of which is that of subsidiarity. In fact, the assistance that the COAFG provides to Afghanistan is a three-level one, at the local

level, at the national level and at the regional level and the Office pursues a decentralization of the efforts, prioritizing the lowest level. Certainly, the regional dimension is fundamental. The neighbouring States, but not only, have a voice in the decision-making process about the policies to counter T.O.C., drug trafficking and terrorism, through different forums, one of which is the Paris Pact Initiative. It is the result of three ministerial conferences, held in Paris (2003), Moscow (2006) and Vienna (2012). It dealt not only with drug production and trafficking, but also with money laundering, the financing of terrorism and the cross-border spread of diseases and it was acknowledged that the opiate threat represents a global challenge. The Paris Pact Initiative and therefore, the regional approach have been put into practice by UNODC through two different projects: the Rainbow Strategy and the Regional Programme for Afghanistan and Neighbouring Countries.

From a programmatic point of view, the UN provides a useful programmatic context through a series of important guidelines, which represent the reference framework for the UNODC action. The programmatic context is composed by three documents, which are the United Nations Development Assistance Framework 2010-2013 (UNDAF), the United Nations Integrated Strategic Framework (ISF), and the Afghanistan Compact. On the basis of this broad programmatic context, UNODC every three years formulates the “Country Programme for Afghanistan”, which is implemented by the COAFG and monitored by various committees, composed both by the Afghan members of the government and by the UNODC representatives.

Finally, the chapter offers a quantitative and qualitative evaluation of the UNODC action in order to detect if there exists a discrepancy between the laws and the practice. The quantitative analysis is based upon the first-hand data collected by UNODC and

published in its various reports. Despite the combined efforts of UNODC and the Afghan government, the policies implemented have not been as effective as they were thought to be for three reasons. First, in 2012, the opium prices were 12% higher than the 2013 ones. This disparity might have provoked the 2013 great increase in the opium poppy production. Secondly, most of the opium poppy is cultivated in the southern and western provinces, which are the most insecure of the country and are dominated by insurgents and organized criminal groups. Thirdly, a province is considered “poppy-free” when the total cultivation amounts for less than 100 hectares. This means that despite the “poppy-free” denomination, probably, a province continues cultivating and manufacturing opium and not only. Moreover, an operative failure was detected since the UNODC eradication campaigns were not successful, also no alternative livelihoods were provided for the local population.

From a qualitative point of view, other considerations should be made. First, the international community did not implement a coordinated strategy, because of the overcrowded framework of the means and the bodies at its disposal. A preliminary reason behind these inconsistencies might be traced back to the misleading measures of successes adopted by UNODC. In fact, as we have previously seen the “poppy-free and province-based” assessment is misleading and unrealistic. Moreover, without providing alternative livelihoods for the local farmers, and without facing the problem of corruption, a solution will be far to be found. In fact, cases of corruption and involvement in drug trafficking and related criminal activities involved high-level officials and even some members of the government. Finally, the structure of UNODC and the characteristics of the international involvement in Afghanistan are highly susceptible to the political interests. This is true not only with regards to the policy

targets and objectives decided within UNODC, but to the “laissez-faire” attitude of the last years.

In conclusion, this thesis tried to explore the legal nature of the drug trafficking phenomenon and the international legal framework that tries to counteract it. Moreover, an effort has been made to understand the presuppositions that allow it to flourish and its effects on the national, regional and international peace and security. It is clear from all this analysis that drug trafficking constitutes a threat from many different points of view and in the light of these considerations, the international community has tried hard in the last decades to forge an international legal environment able to hinder and stop this criminal activity. However, the shift from the law to the practice is neither easy nor predictable and even perfect norms might lead to unexpected or counter-productive outcomes. The case of Afghanistan showed that it is not sufficient to back the concrete action with an overcrowded legal framework, but it is still necessary to convey the commitments and the interests of the whole international community towards a common goal.

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